

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PERRIS J. LEE,
Plaintiff,
v.
I. MCGUCKEN,
Defendant.

Case No. 18-cv-03689-HSG (PR)

**ORDER FOR SERVICE OF PROCESS
AND SCHEDULING**

Plaintiff, an inmate at California State Prison–Sacramento, proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against officials and staff at Salinas Valley State Prison (“SVSP”), where he was previously incarcerated. On October 30, 2018, the Court reviewed the complaint and found that, liberally construed, it stated a cognizable Eighth Amendment claim against SVSP defendants E. Knox, Curry III, F. Medina, J. Streeper, H. Gasca, and I. McGuckin. All other claims were dismissed with leave to amend. Plaintiff has notified the Court that he does not wish to file an amended complaint and elects to proceed only on the Eighth Amendment claim. *See* Dkt. No. 9. Accordingly, to move this action toward resolution, the Court now orders:

1. The Clerk shall issue summons and the United States Marshal shall serve, without prepayment of fees, a copy of the complaint (Dkt. No. 1), a copy of the Court’s October 30, 2018 screening order (Dkt. No. 7), and a copy of this order upon **E. Knox, Curry III, F. Medina, J. Streeper, H. Gasca, and I. McGuckin at Salinas Valley State Prison.**

1 The Clerk shall also mail a courtesy copy of the complaint, the October 30, 2018 screening
2 order, and this order to the California Attorney General's Office.

3 2. In order to expedite the resolution of this case, the Court orders as follows:

4 a. No later than **91 days** from the date this order is filed, defendants must file
5 and serve a motion for summary judgment or other dispositive motion. A motion for summary
6 judgment also must be accompanied by a *Rand* notice so that plaintiff will have fair, timely and
7 adequate notice of what is required of him in order to oppose the motion. *Woods v. Carey*, 684
8 F.3d 934, 939 (9th Cir. 2012) (notice requirement set out in *Rand v. Rowland*, 154 F.3d 952 (9th
9 Cir. 1998) must be served concurrently with motion for summary judgment).¹

10 If defendants are of the opinion that this case cannot be resolved by summary judgment,
11 defendants must so inform the Court prior to the date the motion is due.

12 b. Plaintiff's opposition to the summary judgment or other dispositive motion
13 must be filed with the Court and served upon defendants no later than **28 days** from the date the
14 motion is filed. Plaintiff must bear in mind the notice and warning regarding summary judgment
15 provided later in this order as he prepares his opposition to any motion for summary judgment.

16 c. Defendants **shall** file a reply brief no later than **14 days** after the date the
17 opposition is filed. The motion shall be deemed submitted as of the date the reply brief is due. No
18 hearing will be held on the motion.

19 3. Plaintiff is advised that a motion for summary judgment under Rule 56 of the
20 Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you must
21 do in order to oppose a motion for summary judgment. Generally, summary judgment must be
22 granted when there is no genuine issue of material fact – that is, if there is no real dispute about
23 any fact that would affect the result of your case, the party who asked for summary judgment is
24 entitled to judgment as a matter of law, which will end your case. When a party you are suing

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26 ¹ If defendants assert that plaintiff failed to exhaust his available administrative remedies as
27 required by 42 U.S.C. § 1997e(a), defendants must raise such argument in a motion for summary
28 judgment, pursuant to the Ninth Circuit's opinion in *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014)
(en banc) (overruling *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003), which held that
failure to exhaust available administrative remedies under the Prison Litigation Reform Act,
should be raised by a defendant as an unenumerated Rule 12(b) motion).

1 makes a motion for summary judgment that is properly supported by declarations (or other sworn
2 testimony), you cannot simply rely on what your complaint says. Instead, you must set out
3 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,
4 as provided in Rule 56(e), that contradict the facts shown in the defendants' declarations and
5 documents and show that there is a genuine issue of material fact for trial. If you do not submit
6 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.
7 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand v.*
8 *Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App. A).

9 (The *Rand* notice above does not excuse defendants' obligation to serve said notice again
10 concurrently with a motion for summary judgment. *Woods*, 684 F.3d at 939).

11 4. All communications by plaintiff with the Court must be served on defendants'
12 counsel by mailing a true copy of the document to defendants' counsel. The Court may disregard
13 any document which a party files but fails to send a copy of to his opponents. Until defendants'
14 counsel has been designated, plaintiff may mail a true copy of the document directly to
15 defendants, but once defendants are represented by counsel, all documents must be mailed to
16 counsel rather than directly to defendants.

17 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
18 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required
19 before the parties may conduct discovery.

20 6. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the
21 Court informed of any change of address and must comply with the Court's orders in a timely
22 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
23 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every
24 pending case every time he is moved to a new facility.

25 7. Any motion for an extension of time must be filed no later than the deadline sought
26 to be extended and must be accompanied by a showing of good cause.


27 8. Plaintiff is cautioned that he must include the case name and case number for this
28 case on any document he submits to the Court for consideration in this case.

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9. The Clerk shall add E. Knox, Curry III, F. Medina, J. Streeper, and H. Gasca as defendants on the docket in this action.

IT IS SO ORDERED.

Dated: 12/7/2018


HAYWOOD S. GILLIAM, JR.
United States District Judge